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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,134	08/26/2003	Ernest Ndzebet	RAYO 9236.9(RP-1596A)	3252

49376 7590 09/28/2006

SENNIGER POWERS (RAYO)  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST. LOUIS, MO 63102

EXAMINER

KALAFUT, STEPHEN J

ART UNIT PAPER NUMBER

1745

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/648,134

Applicant(s)

NDZEBET ET AL.

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7,10,12,14-25,27,28,30,31,33 and 35-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4,6,7,9,10,12,21-25,27,28,30,31 and 33 is/are allowed.
- 6) ☒ Claim(s) 14-20 and 35-42 is/are rejected.
- 7) ☒ Claim(s) 43 and 44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 06 April 2006.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 14-20 and 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldstein *et al.* (US 5,419,987) in view of Christian *et al.* (US 6,991,875), for reasons of record in paper no. 20060316, page 3.

Claims 1-4, 6, 7, 9, 10, 12, 21-25, 27, 28, 30, 31 and 33, for reasons of record, are allowed. See paper no. 20060316, pages 3 and 4. These claims are now free of the previous rejection under §112.

Claims 43 and 44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Like the allowed claims, these claims recite an anode mixture including metal powder, a gelling agent, an electrolyte having less than 40 weight percent hydroxide, and an amphoteric surfactant.

Applicant's arguments filed 12 July 2006 have been fully considered but they are not persuasive.

Applicants argue that Goldstein *et al.* provide only a general reference to zinc particle size, which may be anywhere from 5 to 1000 microns. This is not persuasive because it faults a reference individually, while the other reference is used to teach particle sizes. One cannot show

nonobviousness by attacking references individually where the rejections are based on a combination of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicants argue that Christian *et al.* do not disclose a gelled anode in which at least 70 weight percent of the zinc have a particle size within a 100-micron distribution, with a mode between about 100 and 300 microns. Instead, Christian *et al.* only teach that whatever amount of zinc has a 95 to 105 micron mode, 75 weight percent of that zinc has a size from 25 to 140 microns. While Christian *et al.* teach multimode distributions, they also allow for single mode particle size distributions, as indicated by the phrase “can have a multi-modal distribution” (column 3, lines 56-57) and “or the anode includes a multi-modal distribution (column 1, lines 34-35). Thus, the guidelines given by Christian *et al.* would be applicable to single mode distributions as well. The mode that ranges from 95 to 105 microns would overlap with the present range of about 100 to about 300 microns. The value of 75 weight percent having sizes from 25 to 140, which would be a 115 micron wide range would mean that a slightly smaller value, such as 70 weight percent, would have a correspondingly smaller range, which would be somewhat less than 115 microns wide, or close to 100 microns. While the exact present range is not mentioned, it would fall within the guidelines taught by Christian *et al.*

The IDS submitted on 06 April 2006 has been reviewed. Goldstein et al. (cite no. 12) is already of record, and thus crossed out.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk



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